

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DOROTHY WADE, On Behalf of Herself and :	No. 1:08-cv-00357-SEB-DML
All Others Similarly Situated,	:
	:
Plaintiff,	: <u>CLASS ACTION</u>
	:
vs.	:
	:
WELLPOINT, INC., et al.,	:
	:
Defendants.	:
	:
	:

NOTICE OF RECENT AUTHORITY IN SUPPORT OF LEAD PLAINTIFF'S OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

TO THE COURT, ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on October 28, 2009, the Ninth Circuit Court of Appeals issued an order in *Siracusano v. Matrixx Initiatives, Inc.*, No. 06-15677, 2009 U.S. App. LEXIS 23716 (9th Cir. Oct. 28, 2009). The order is attached as Exhibit A. The order addresses issues that are relevant to Lead Plaintiff's Opposition to Defendants' Motion to Dismiss Amended Complaint which is currently pending before the Court. Specifically, the Ninth Circuit held:

In *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982 (9th Cir. 2008), the defendants argued that a passage in the company's SEC filings regarding backlogged work alerted reasonable investors to the risk that the company might not get paid for work that had actually been stopped. We rejected the argument, stating that "[t]he passage . . . speaks entirely of as-yet-unrealized risks and contingencies. Nothing alerts the reader that some of these risks may already have come to fruition, and that what the company refers to as backlog includes work that is substantially delayed and at serious risk of being cancelled altogether." *Id.* at 986. . . .

Similar to *Berson*, the passage in the Form 10-Q speaks about the risks of product liability claims in the abstract, ***with no indication that the risk "may already have come to fruition."***

Id. at *35-*36 (emphasis added). The court held further:

The Supreme Court has stated, however, that, "[w]hile it is true that motive can be a relevant consideration, and personal financial gain may weigh heavily in favor of a scierter inference, ***we agree with the Seventh Circuit that the absence of a motive allegation is not fatal.***" *Tellabs*, 551 U.S. at 324.

Id. at *39 (emphasis added).

DATED: November 6, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 6, 2009.

s/ EX KANO S. SAMS II
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Manual Notice List

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